



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Mr. Everette D. Jobe
General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR95-757

Dear Mr. Jobe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32391.

The Texas Department of Banking (the "department") received a request for the telephone records of certain individuals. You say the department will release portions of the requested information. However, the department seeks to withhold portions of the requested information pursuant to sections 552.101, 552.103, 552.110, 552.111, and 552.112. You have submitted representative samples of the requested documents for our review.¹

Section 552.101 excepts information made confidential by law. You invoke two confidentiality statutes, V.T.C.S. article 342-210 and article 548b, section 8(c). We agree that these statutes except from required public disclosure portions of the requested information. Gov't Code § 552.101. However, we cannot apply these provisions to information that is not about the "financial condition" of a bank or holding company, *see* V.T.C.S. article 342-210, or the "financial condition" of a "seller," *see* V.T.C.S. article 548b, § 8(c). We have marked the documents accordingly.²

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You also raised section 20 of V.T.C.S. article 350, which, with certain exceptions, makes confidential information the department obtains about the financial condition of a person licensed under the

You also assert that section 552.101 excepts portions of the requested information based on the informer's privilege. You have not explained why this is so. The informers' privilege protects the identity of individuals who report violations of the law. You have provided no information about why the privilege applies to the information you have marked. Consequently, the department may not withhold from required public disclosure any information based on section 552.101 and the informer's privilege.

Your final assertion under section 552.101 is based on the privacy of an individual whose mobile telephone number appears in the requested information. As that number is not highly intimate or embarrassing information, it is not excepted from disclosure based on section 552.101. *See* Open Records Decision Nos. 475 (1987), 455 (1987).

You have marked portions of the information as excepted from disclosure by section 552.103 of the Government Code, the litigation exception. You say "[t]he department is actively involved in litigation and some telephone messages deal with these matters." You have not provided enough information to allow us to conclude that the department may withhold any of the requested information based on section 552.103 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We agree that section 552.111 applies to portions of the information and have marked the documents accordingly.

Although you raised section 552.110 and 552.112 in your letter to this office, you have not marked any of the information you enclosed as within these exceptions. Consequently, we do not consider the applicability of these provisions to the information.

(Footnote continued)

Currency Exchange Act, V.T.C.S. article 350. You did not mark any of the information as covered by this provision. As we cannot discern whether the information concerns such licensees, we cannot conclude that V.T.C.S. article 350 section 20 applies to any of the information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 32391

Enclosures: Marked documents

cc: Mr. Chuck Gschwend
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